

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3785 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

CONSUMER UNITY & PROTECTION CENTER

Versus

NADIAD MUNICIPALITY

Appearance:

MRS SHILPA G SHAH for Petitioner.

MR MC SHAH for Respondent No. 1

Ms. Manisha Lavkumar, AGP for Respondents No. 2-4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 20/12/2001

ORAL JUDGEMENT

When the matter is called out, neither the petitioner nor its advocate is present in the Court. Learned Assistant Government Pleader appearing for the respondents Nos. 2 to 4 is present. After hearing the learned Assistant Government Pleader and after perusing the petition and the affidavit-in-reply filed by the respondent No.1, the matter is being decided on merits.

2. The petitioner in this petition has sought for mandatory directions against the respondent No.1 directing him to assess the education cess in pursuance of sub-rule 2-A of Rule 3 of the Gujarat Education Cess Rules, 1962. The petitioner has also sought for mandatory injunction from this Court restraining the respondent No.1 from collecting the education cess as already assessed by him for the assessment years 1988-89, 1989-90 and 1990-91. The petitioner has further prayed for mandatory direction directing the respondent No.3 to refund the amount of education cess with interest to the concerned tax-payers collected by the respondents more than what they are entitled to in pursuance to the Gujarat Education Cess Rules, 1962.

3. In support of the prayers made by the petitioner in the petition, the petitioner has contended that in exercise of the powers conferred by Section 28 of the Act, the Government of Gujarat has made the Gujarat Education Cess Rules, 1962, for fulfilling the objects of the Act. Rule 3 of the said Rules provides the manner in which the Collector would have to collect the tax, where direction under clause (b) of sub-section (1) of Section 15 has been issued in respect of any urban area. Sub-rule (2)B of Rule 3 of the Rules provides that in assessing education cess on buildings or lands where value is based on the annual letting value a sum equal to ten per cent of the said valuation shall be deducted therefrom in view of allowance for repairs or on any other account whatsoever. It was further contended by the petitioner that the respondent No.1 has assessed and collected education cess on the land and building at the rate specified in Section 12 of the Act. However, it has not deducted the amount equal to 10% of the valuation from the amount of valuation on account of allowance for repairs or on any other count, inspite of the fact that the valuation determined under sub-rule 2-A of Rule 3 of the Rules is based on the Annual Letting Value.

4. The claim of the petitioner is opposed by the respondent No.1 Municipality. In the affidavit-in-reply filed by the Municipality, it was specifically pointed out that Rule 3 of Gujarat Education Cess Rules has no application to the facts of the petitioner's case. According to the respondent No.1 Municipality, Rule 3 applies only in those cases in which direction under Clause (b) of sub-section (1) of Section 15 of the Gujarat Education Cess Act has been issued in respect of any urban area directing the Collector to collect tax. It is an admitted position that no direction under

Section 15(1)(b) of the Act has been issued to the Collector. For appreciating the contention raised by the respondent No.1 Municipality while opposing the claim of the petitioner, it is necessary to reproduce the provisions of Section 15 of the Act, which read as under:

"15. Authorities competent to collect tax etc.

(1) The tax under Section 12 shall be collected.____

(a) in the Contonment of Ahmedabad, by the Collector of Ahmedabad; and

(b) in other urban areas, by the respective local authorities concerned;

Provided that where a local authority is not for the time being levying a property tax or where a local authority has made a default in the collection of the tax or payment thereof to the State Government, the State Government may by order direct that the tax shall be collected by the Collector."

From the plain reading of the above Section, it is obvious that the said Section provides for the authorities which can collect tax. So far as the Contonment of Ahmedabad is concerned, the authority competent to collect tax is the Collector, Ahmedabad and with regard to the rest of the urban areas, tax is required to be collected by the respective local authorities and the respondent No.1 herein is the local authority within the meaning of Section 2(vi) of the Gujarat Education Cess Act.

5. It is further urged on behalf of the respondent No.1 Municipality in the affidavit-in-reply that the Proviso to clause (b) of sub-section (1) of Section 15 of the Act contemplates the issuance of direction directing the Collector to collect the tax in any of the three cases only, namely;

(1) Local Authority is not for the time being levying property tax;

(2) The Local Authority has made default in the collection of tax;

(3) The Local Authority has made default in payment

of tax collected.

On the basis of the above provisions contained in Proviso to clause (b) of sub-section (1) of Section 15, it was contended by the respondent No.1 Municipality that the State Government can issue the direction directing the Collector instead of the Local Authority, to collect the tax only in the aforesaid circumstances. It is the say of the respondent No.1 Municipality that none of the circumstances mentioned above is existing. It has been emphatically stated that the respondent No.1 is levying property tax, it is not making default in the collection of tax, and it is not making default in payment of the tax collected to the State Government and as such no direction as contemplated by the Proviso has been issued by the State Government directing the Collector to collect tax under the Proviso. It is in this view of the matter that the respondent No.1 has contended that Rule 3 of Gujarat Education Cess Rules has no application to the facts of the case. In the present case, since the tax was to be collected by the Nadiad Municipality and not by the Collector, the procedure prescribed under Rule 3 for collection of the tax by the Collector has no application so far as it relates to the collection of education cess on lands and buildings located within the limits of Nadiad Municipality.

6. In view of the aforesaid facts and circumstances of the case and in view of the relevant provisions contained in the Act as well as Rules framed thereunder, I am of the view that the petitioner is not entitled to any relief claimed in the present petition, and hence the petition fails. Rule is discharged with no order as to costs.

[K.A. Puj, J.]
(rmr).